UNITED
NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.15
30 October 1992

Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

IRELAND

[22 June 1992]

CONTENTS

		Paragraphs	Page
I.	The Irish political, legal and administrative system	1 - 18	3
	A. Land and people	1 - 3	3
	B. The Irish language	4 - 5	3
	C. Recent political history	6	4
	D. The Constitution of Ireland	7	4
	E. Government	8 - 10	4
	F. Dail Eireann (House of Representatives)	11	5
	G. Seanad Eireann (Senate)	12 - 13	5
	H. Parliamentary Committees	14	5
	I. Electoral system	15	6
	J. Civil service	16 - 17	6
	K. Local government	18	6

GE.92-18207 (E)

CONTENTS (continued)

	Paragraphs	Page
II. The general legal framework within which human rights are protected	19 - 65	7
A. The Constitution of Ireland	19 - 20	7
B. Court system	21 - 28	7
C. International human rights law in the Irish legal framework	29 - 33	9
D. Fundamental human rights in Irish law	34 - 41	11
E. Judicial remedies for breaches of human rights	42	14
F. Judicial review of legislation and legislative proposals	43 - 53	15
G. Judicial review of delegated legislation	54 - 55	18
H. Constitutional review of administrative or executive action	56 - 57	19
I. Remedies	58	20
J. Judicial review	59 - 60	20
K. Injunctions	61	20
L. Damages	62 - 64	21
M. Information and publicity	65	21
List of annexes *		22

---

* The annexes, as received in English from the Government of Ireland, are available for consultation in the files of the United Nations Centre for Human Rights. They are common to this document and to the initial report of Ireland (CCPR/C/68/Add.3).

I. THE IRISH POLITICAL, LEGAL AND ADMINISTRATIVE SYSTEM

A. Land and people

1. The island of Ireland is situated in the north-west of the continent of Europe and has a total area of 84,421 square kilometres. A strong maritime influence and the presence of the Gulf Stream assure an equable moist climate free from extremes of cold and heat. The country is historically divided into four provinces, each roughly equivalent with the four primary points of the compass, i.e. Ulster (North), Munster (South), Connaught (West) and Leinster (East). Under Article 2 of the Constitution of Ireland, "the national territory consists of the whole island of Ireland, its islands and the territorial seas". Article 3 of the Constitution States:

> "Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann and the like extra-territorial effect".

The current area of application of the laws enacted by the Oireachtas (Irish Parliament) covers 26 of the 32 counties; the remaining north-eastern counties form part of the jurisdiction of the United Kingdom.

2. The 1991 population census estimated the population at 3,523,400. The major population centres are Dublin, Cork, Galway, Limerick, and Waterford. An examination of the census records trends similar to those in other European countries, e.g. high life expectancy, low death rate, low infant and maternal mortality (see Annex 1). The census also reveals a high dependency ratio as can be seen in the large percentage of the population which is under 15 and over 65. In 1990, 57 per cent of the population lived in urban areas. Approximately 79 per cent of all homes are owner occupied, a high figure by international standards. Information on economic indicators is provided in annex II.

3. The majority of Irish people belong to Christian religious denominations. The 1981 census showed that 93 per cent of the population were Roman Catholic and 3.4 per cent belonged to various Protestant denominations. The remainder belonged either to smaller religious groups, or had no specific religious beliefs.

B. The Irish language

4. The two official languages are Irish, which is the national language, and English. Irish is a Celtic language, closely related to Scottish Gaelic, Welsh and Breton. The 1986 census showed that 30 per cent claimed to have an adequate command of the language. Irish is spoken as the first language in areas known as the Gaeltacht, situated mainly along the western seaboard and in isolated pockets in other parts of the country.

5. A Minister is in charge of a separate Government Department with responsibility for the economic, social and cultural development of the

Gaeltacht (i.e. Irish-speaking) areas and for promoting the use of the Irish language throughout the country. The Minister has two statutory bodies under his aegis. Udarás na Gaeltachta (the Gaeltacht Authority) is primarily concerned with the promotion of industrial development in Gaeltacht areas and Bord na Gaeilge (the Irish Language Board) promotes the use of Irish throughout the country.

C. Recent political history

6. Ireland has been inhabited for approximately 9,000 years and its history is marked by successive movements of peoples from continental Europe including the Celts, the Vikings, Normans and English. In 1921, after a War of Independence a treaty was signed with Britain: the Irish Free State (26 counties) gained independence from Britain while Northern Ireland (6 counties) remained in the United Kingdom. The adoption of the Constitution of Ireland in 1937 and the Republic of Ireland Act, 1948, severed Ireland's last formal links with Britain. Ireland remained neutral during the Second World War and does not belong to any military alliance. Ireland became a member of the United Nations in 1955 and joined the European Community in 1973.

D. The Constitution of Ireland

7. The basic law of the State is the Constitution of Ireland adopted by referendum in 1937. It is the successor of the 1919 Constitution of Dail Eireann (the House of Representatives) and of the 1922 Constitution of the Irish Free State. The Constitution states that all legislative, executive and judicial powers of Government derive from the people. It sets out the form of Government and defines the powers of the President of Ireland, the Parliament (in the Irish language, Oireachtas) and of the Government. It also defines the structure and powers of the Courts, sets out fundamental rights of citizens and contains a number of directive principles of social policy for the general guidance of the Oireachtas. The Constitution outlines what are considered the fundamental rights of the citizen. The definition of rights covers five broad headings: Personal Rights, The Family, Education, Private Property and Religion. See Part II General Legal Framework, for further details.

E. Government

8. Ireland is a sovereign, independent parliamentary democracy. The national Parliament (Oireachtas) consists of the President and two Houses: a House of Representatives (Dail Eireann) and a Senate (Seanad Eireann). The functions and powers of the President, Dail and Seanad derive from the Constitution of Ireland and law. All laws passed by the Oireachtas must conform to the Constitution.

9. Under the Constitution, the sole power of making laws is vested in the Oireachtas. The only exception is in the area of European Community law where certain measures taken by the European Communities have direct application in Ireland. This exception necessitated an amendment to the Constitution in 1972 which was approved by a referendum. A further referendum in 1987 approved an additional amendment to the Constitution which enabled the State to ratify amendments to the European Community treaties set out in the Single European

Act, which extended the scope of measures by the European Community which have direct application in Ireland.

10. The President is Head of State; the office does not have executive functions. The President must generally act on the advice and authority of the Government. On the nomination of Dail Eireann the President appoints the Taoiseach (Prime Minister) and, on the advice of the Taoiseach and with the prior approval of Dail Eireann, the President appoints members of the Government. Government policy and administration may be examined and criticized in both Houses, but under the Constitution the Government is responsible to the Dail alone.

F. Dail Eireann (House of Representatives)

11. Dail Eireann has 166 members called Teachtai Dala (TDs). Members are returned by the 41 constituencies into which the country is at present divided and no constituency may return less than three members. The total number of members of the Dail may not be fixed at less than one member for each 30,000 of the population or more than one member for each 20,000 of the population.

G. Seanad Eireann (Senate)

12. Seanad Eireann has 60 members. Eleven are nominated directly to the House by the Taoiseach (Prime Minister). Forty-three are elected by members of Dail Eireann, by outgoing members of the Seanad, by county and borough Council members, from five panels of candidates - the Cultural and Educational Panel, the Agricultural Panel, the Labour Panel, the Industrial and Commercial Panel and the Administrative Panel. Each panel contains the names of persons with knowledge and practical experience of the interests represented by the panel. The remaining six are elected by the graduates of universities - three by the National University of Ireland and three by the University of Dublin.

13. The powers of the Seanad, as defined by the Constitution are, in general, less than those of the Dail. It has complementary powers with the Dail in broad areas such as the removal from office of a President or a judge; the declaration and termination of a state of emergency; the initiation of Bills other than Money Bills; and the annulment of statutory instruments. It has no powers in relation to financial matters.

H. Parliamentary Committees

14. There is a system of Parliamentary Committees in operation within the Oireachtas. Under standing orders four committees must be appointed, on Selection, on Public Accounts, on Procedure and Privileges and on Consolidation Bills. Other committees may be established by a resolution of the Dail. To enable them to report and make recommendations to Parliament, they are empowered to request official papers and to hear evidence from individuals. Their findings are not binding. The reports of the Committees are laid before the Oireachtas which decides what action, if any, is necessary. It is a matter for the Oireachtas to decide upon the number and range of Committees which should be established, together with their terms of reference.

I. Electoral System

15. In Ireland, citizens have the opportunity to take part in the political process by casting a vote in five decision-making procedures:

(a) the election of the President every seven years;

(b) referenda on proposed constitutional amendments;

(c) elections to local authorities, usually every five years;

(d) parliamentary elections, which occur under present legislation at least every five years;

(e) elections to the European Parliament, every five years.

The electoral system in Elections to the Dail is proportional representation by means of the single transferable vote in multimember constituencies. It is also used for the election of 49 of the 60 members of the Seanad, members of the Local Authorities and of the President.

J. The Civil Service

16. The legal basis for the present Irish system of public administration is contained in the Ministers and Secretaries Act of 1924. This Act, and its subsequent amendments, provide a statutory classification of the functions of Government under the various Departments of State. Ministers are responsible for all the actions of their Departments. However, the day-to-day administration of a Department's functions is overseen by its Secretary, who is a civil servant.

17. The Civil Service is independent in the performance of its functions and civil servants are precluded from involvement in party political activity. Recruitment to the Civil Service is by open public competition administered by an independent State commission. The Civil Service comprises a number of grades with different functions. The principal grade categories are: administrative, responsible for policy formulation; technical and scientific, providing specialist advice within the Civil Service; executive, involved in the implementation of policy; and clerical, responsible for general duties. At present there are approximately 27,000 people employed in the Civil Service.

K. Local Government

18. Local government is administered by 113 local authorities funded partly by State grants and partly by local taxes on non-residential property. Local government has responsibility for public housing, water and sanitation, road maintenance, vocational education and certain other services. Health services are provided by eight Health Boards organized on a regional basis and funded by the Department of Health. Other aspects of administration operated on a regional basis include tourism promotion, industrial development and fishery conservation.

II. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. The Constitution of Ireland

19. Ireland's basic law is contained in the Constitution of Ireland, enacted by plebiscite in 1937. Relevant Articles of the Constitution are set out in this report as occasion requires. The Constitution sets out the essential rules governing the most important institutions of State, the President and the two houses of the Oireachtas (Parliament), the Government and the Judiciary, and the relationship between these institutions. It also contains a comprehensive code for the protection of human rights, which is dealt with in more detail in paragraphs 34-41 below.

20. The Constitution of Ireland can be amended only following the passage of a Bill to amend the Constitution by a simple majority of both Houses of the Oireachtas and the subsequent approval of the proposal by a majority of those voting in a referendum. Accordingly, the process of Constitutional amendment is a difficult one and the Constitution has been amended on only eight occasions since 1941. On only one occasion did an amendment to the Constitution affect in a fundamental way the provisions concerning human rights. That was the insertion in 1983 of a provision intended to protect the right to life of the unborn. The Constitution cannot, therefore, be amended by ordinary legislation, and legislation which conflicts with the Constitution is invalid to the extent of such inconsistency. The Courts are empowered to deal with the issue of constitutionality of law and legislation. Judicial review of ordinary law on grounds of alleged unconstitutionality is dealt with further in paragraphs 43-55 below.

B. Court system

21. At this point, it may be convenient to give a brief description of the system of courts in Ireland and the place of the judiciary in the Irish constitutional framework. The basic structure of courts in Ireland has four levels, the District Court, the Circuit Court, the High Court and the Supreme Court. There is also a Court of Criminal Appeal. A Special Criminal Court deals with terrorist offences. The District and Circuit Courts are courts of local and limited jurisdiction established by statute law. The High Court is, by virtue of Article 34.3.1 of the Constitution of Ireland, invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. The Supreme Court is the court of final appeal and is established pursuant to Articles 34.2 and 34.4.1 of the Constitution. A more detailed description of their workings and jurisdiction is as follows:

1. The District Court

22. Ireland is divided into 24 Districts each of which has its own District Court which sits in different venues in the district. The Court has jurisdiction in civil claims up to a value of £Ir 5,000. It can deal summarily with minor criminal offences. It cannot impose a penalty of more than 12 months' imprisonment for any 1 offence, or consecutive sentences totalling more than 2 years, and the maximum fine that can be imposed for the offences triable in the District Court generally does not exceed £1,000. An

appeal by way of rehearing lies in all cases to the Circuit Court. The District Court can, and in certain cases must, seek an opinion from the High Court on points of law which arise in the course of hearings. This is known as "stating a case". The High Court will rule on the point of law and remit the case to the District Court to decide based on that ruling. The District Court also has an extensive licensing jurisdiction.

2. The Circuit Court

23. Ireland is divided into eight areas, in each of which the Circuit Court sits in a number of different venues. The Court has the appellate jurisdiction already described. When an appeal is heard the Circuit Court Judge sits without a jury. Its decision on appeals from the District Court is final. The Circuit Court has an original jurisdiction in civil matters up to a maximum claim of £30,000. It also sits with a jury to try all indictable crime except trials for treason, murder, manslaughter, rape and certain other serious sexual offences. An appeal by way of rehearing lies in civil cases to the High Court. An appeal in criminal cases lies to the Court of Criminal Appeal. The Circuit Court may also "state a case" to the Supreme Court.

3. The High Court

24. It has the appellate functions from the Circuit Court and (by way of case stated) from the District Court already described. Its decisions on appeal are final. The High Court has, as already stated, a full original jurisdiction in all civil and criminal matters. When the High Court sits with a jury to try crimes it is known as the Central Criminal Court. Treason, murder, manslaughter, rape and certain other serious sexual offences must be tried there. An appeal lies from the High Court in civil matters to the Supreme Court and in criminal cases to the Court of Criminal Appeal. The High Court is the only court with original jurisdiction to deal with a claim that a law enacted after 1937 is invalid having regard to the provisions of the Constitution.

4. The Court of Criminal Appeal

25. This consists of three judges of the Supreme and High Courts. It can hear appeals from all cases of indictable crime dealt with in the Circuit and Central Criminal Courts. It does so on the basis of a transcript from the lower court. It can vary the sentence of the lower court, and set aside a verdict and if necessary order a retrial. An appeal lies from its decisions to the Supreme Court where it or the Attorney General certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that such an appeal should be taken (The Courts of Justice Act, 1924, section 29).

5. The Supreme Court

26. It has the appellate jurisdictions already described. It has no original jurisdiction except in cases where pursuant to Article 26 of the Constitution, a Bill is referred to it by the President prior to signing it for a decision on its constitutionality.

27. In addition to the structure of courts described in the preceding paragraphs, provision for the establishment of special criminal courts is made in Article 38.3.1 of the Constitution which states that "Special Courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order." Accordingly Part V of the Offences Against the State Act, 1939 authorizes the establishment of Special Criminal Courts following a proclamation by the Government, in the terms required by the Constitution "that the ordinary courts are inadequate to secure the administration of justice and the preservation of public peace and order" and ordering that Part V of the Act is to be in force. Arising out of the crisis in Northern Ireland and the incidence of violent terrorism, a proclamation was made on 26 May 1972, which is still in force, authorizing the establishment of a Special Criminal Court. The Special Criminal Court is empowered to try charges where it is considered that the ordinary criminal courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The Court established since 1972 has always sat as a Court of three serving or former judges, one from each of the High, Circuit and District Courts, sitting without a jury. The Court can act by majority decision but only one decision is pronounced. There is a full right of appeal to the Court of Criminal Appeal.

28. The judges in Ireland are independent both of the executive and the legislature and this independence is jealously guarded by them and given full protection by the Constitution. They are appointed by the President acting on the advice of the Government (Articles 35.1 and 13.11 of the Constitution). Article 35.2 provides that all judges shall be independent in the exercise of their functions and subject only to the Constitution and the law. They may not be members of the Oireachtas (Parliament) or hold any other office or position of emolument (Article 35.3). They may not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by both Houses of the Oireachtas calling for their removal (Article 35.4). This power has never had to be exercised. Their remuneration may not be reduced during their continuation in office (Article 35.5). Judges in Ireland retire at the age of 72, except for District Judges who retire at 65, subject to a power to extend their terms of office to age 70 conferred on a committee consisting of the Chief Justice, the President of the High Court and the Attorney General. With the exception of the power of the Oireachtas to remove a judge, questions of discipline in relation to judges are regulated by the judiciary itself.

C. International human rights law in the Irish legal framework

29. Article 29.3 of the Constitution states that "Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other States". Ireland's legal system, inherited from the period of British rule in Ireland, is a system of common law. Like other common-law countries, Ireland has a "dualist" system under which international agreements to which Ireland becomes a party are not automatically incorporated into domestic law. Article 29.6 of the Constitution of Ireland provides that "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas." This provision has been

interpreted as precluding the Irish courts from giving effect to an international agreement, such as the European Convention on Human Rights, if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law (In re O Laighleis [1960] I.R.* 93, Norris -v- Attorney General [1984] I.R. 36).

30. Where Ireland wishes to adhere to an international agreement it must, therefore, ensure that its domestic law is in conformity with the agreement in question. In some cases the entire contents of an international agreement are transposed into domestic law by providing that the agreement shall have the force of law within the State. An example is the Diplomatic Relations and Immunities Act, 1967, which provides that the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations have the force of law in Ireland. In other cases it is necessary to transpose only certain provisions of an agreement because other provisions are either already incorporated in domestic law or are of a nature not requiring incorporation. Sometimes it may be that for the same reason no transposition provisions are required at all.

31. These principles apply also to human rights agreements such as the United Nations Covenants or the European Human Rights Convention. Here, however, further considerations arise which make the direct incorporation of such agreements into domestic law difficult to achieve. The provisions of the International Covenant on Civil and Political Rights are, for the most part, of a type which one would expect to find already covered by the human rights provisions of a Constitution or a Bill of Rights, and such similar provisions are indeed contained in the Constitution of Ireland. It would generally be inappropriate to make provision for fundamental rights by way of ordinary legislation which would be inferior and subject to existing constitutional provisions. Where existing constitutional guarantees already cover a particular area it would be inappropriate to amend a constitution to insert a second, or even a third, parallel provision. The remedy of substituting the provisions of the Covenant for the existing constitutional provision would be undesirable because it would involve jettisoning the jurisprudence built up around the existing provision. Finally, while it might appear that to have constitutional provisions in the precise terminology of the Covenant would be legally advantageous, any advantage could be more apparent than real unless the domestic tribunal were to take the same view of its interpretation as the Human Rights Committee. The solution of direct incorporation of the Covenant into Irish law has not, therefore, been adopted.

32. In the case of Ireland, when a decision was made some years ago to accede to the International Covenant, a Committee under the chairmanship of the Attorney General was charged with examining Ireland's domestic law in the light of the Covenant to identify any possible areas in which a conflict between the two might arise. As a result of this examination a number of amendments to domestic law were identified, notably the final abolition of the death penalty (which disposed of a possible conflict between Irish law before

---

* The reference "I.R." in the text refers to the catalogue of legal cases known as "Irish Reports".

abolition and Article 6.5 of the Covenant) and the introduction of a new law on incitement to hatred (The Prohibition of Incitement to Hatred Act, 1989), which was necessary to ensure compliance with Article 20.2. In certain other areas reservations to the Covenant were identified as necessary. In other areas it was considered that the existing Irish domestic law - which is, in the context of rights referred to in the Covenant, generally contained in the Constitution - was in conformity with the Covenant. These areas are covered in detail in the initial report of Ireland (CCPR/C/68/Add.3) submitted under article 40 of the International Covenant on Civil and Political Rights.

33. It follows from the "dualist" nature of Ireland's legal system that the provisions of the Covenant cannot be invoked before and directly enforced by the Courts, and that it is necessary to examine the extent to which Irish law itself correctly reflects the obligations of the International Covenant on Civil and Political Rights.

D. Fundamental human rights in Irish law

34. A large number of rights are specifically provided for in the Constitution of Ireland. They are principally, although not exclusively, to be found in the Chapter headed "Fundamental Rights" which comprises Articles 40-44. These include the following rights:

(a) Equality before the law (Article 40.1);

(b) The right to life (Article 40.3.2 and 3);

(c) The right to protection of one's person (Article 40.3.2);

(d) The right to one's good name (Article 40.3.2);

(e) Property rights, including the right to own, transfer, bequeath and inherit property (Article 40.3.2 in conjunction with Article 43);

(f) Personal liberty (Article 40.4);

(g) The inviolability of the dwelling (Article 40.5);

(h) Freedom of expression (Article 40.6.1 i.);

(i) Freedom of assembly (Article 40.6.1 ii);

(j) Freedom of association (Article 40.6.1 iii);

(k) Family rights (Article 41);

(l) The right of parents to provide for children's education (Article 42.1);

(m) The right of children to receive a certain minimum education (Article 42);

(n) Freedom of conscience and the free profession and practice of religion (Article 44);

(o) The right to vote (Articles 12.2.2, 16.1 and 47.3);

(p) The right to seek election (Articles 12.4.1 and 16.1);

(q) The right to have votes treated as being of equal weight (Article 16);

(r) The right to have justice administered in public by judges who are independent (Articles 34 and 35);

(s) The right to criminal trial in course of law (Article 38.1);

(t) The right to trial by jury (Article 38.5);

(u) The right not to have one's acts retrospectively declared to be unlawful (Article 15.5).

35. In addition to the specified rights referred to above, the Irish courts have identified a number of rights which, although not expressly referred to in the Constitution are none the less protected by it. The origin of this doctrine lies in Article 40.3.1 and 2 of the Constitution, which provides as follows:

> "1. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
>
> 2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

36. In Ryan -v- Attorney General [1965] I.R. 294, the seminal case in relation to the doctrine of unspecified personal rights, the Plaintiff alleged that proposals to introduce fluoride to water supplies infringed her right to bodily integrity. Kenny J. in the High Court held against her on the merits but agreed that "the personal rights which may be invoked to invalidate legislation are not confined to those specified in Article 40 but include all those rights which result from the Christian and democratic nature of the State" (at p. 312).

37. On appeal the Supreme Court reaffirmed this approach: "The Court agrees with Mr. Justice Kenny that the personal rights mentioned in Section 3, 1 [of Article 40] are not exhausted by the enumeration of 'life, person, good name and property rights' in section 3, 2 as is shown by the use of the words 'in particular', nor by the more detached treatment of specific rights in the subsequent sections of the Article. To attempt to make a list of all the rights which may properly fall within the category of 'personal rights' would be difficult and, fortunately, is unnecessary in this present case." (at pp. 344-5).

38. While the "personal rights" provision of Article 40.1 is the principal source of implied rights in the Constitution of Ireland, other provisions of the Constitution may also be a source of implied rights, either separately or in conjunction with Article 40. For example, the right to have a criminal trial in due course of law, referred to in Article 38, has been held to import a requirement to have fair procedures which furnish an accused with an adequate opportunity to defend himself, and hence, in certain circumstances, a right to legal aid at the expense of the State (The State (Healy) -v- Donoghue [1976] I.R. 325). The right to privacy in marriage may be argued to derive from the family rights of Article 41 as well as from Article 40. (McGee -v- Attorney General [1973] I.R. 284). The express right to associate referred to in Article 40.6.1 iii has been held to imply a correlative right not to be a member of an association (Education Company -v- Fitzpatrick (No. 2) [1961] I.R. 345).

39. Among the implied, unspecified or unenumerated rights that have been recognized by the Irish courts to date are the following:

(a) The right to bodily integrity (Ryan -v- Attorney General [1965] I.R. 294);

(b) The right not to have one's health endangered (The State (C) -v- Frawley [1976] I.R. 365);

(c) The right to justice and fair procedures, and, in a criminal trial, to an adequate opportunity to defend oneself, and to legal representation (The State (Healy) -v- Donoghue [1976] I.R. 325);

(d) The right not to be tortured or subjected to inhuman or degrading treatment or punishment (The State (C) -v- Frawley [1976] I.R. 365);

(e) Rights relating to privacy:

(i) within marriage (McGee -v- Attorney General [1974] I.R. 284.);

(ii) to privacy of communications (Kennedy -v- Ireland (1987) I.R. 587);

(f) The right to communicate (Attorney General -v- Paperlink (1984) I.L.R.M. 373, Kearney -v- Minister for Justice (1987) I.L.R.M. 47);

(g) The right to marry (Ryan -v- Attorney General, unreported, Supreme Court, 14 February, 1991);

(h) The right to work and earn a livelihood (Murtagh Properties -v- Cleary [1972] I.R. 330, Murphy -v- Stewart [1973] I.R. 97);

(i) The right to travel, both within the State and abroad, and to obtain a passport (Ryan -v- Attorney General [1965] I.R. 294, The State (M) -v- Attorney General [1979] I.R. 73);

(j) The right not to be compelled to join an association against one's will (Education Company -v- Fitzpatrick (No. 2) [1961] I.R. 345);

(k) The right to litigate and have access to the courts (McCauley -v- Minister for Posts and Telegraphs [1966] I.R. 345);

(l) The rights of children to nurturing, to an upbringing and education and to have the opportunity of working and of realizing their personality and dignity as human beings (G -v- An Bord Uchtala [1980] I.R. 32);

(m) The rights of natural mothers to the custody and care of their children (G -v- An Bord Uchtala [1980] I.R. 32).

40. It should be noted that few, if any, of these rights are unlimited or absolute. In many cases they are qualified in the text of the Constitution itself. For example, the right of assembly in Article 40.6.1 is qualified in the sense that the right is subject to public order and morality, applies only to peaceable assembly without arms, and that provision may be made by law to prevent or control meetings calculated to cause a breach of the peace or to be a danger or a nuisance to the general public, and to prevent or control meetings in the vicinity of the Oireachtas (Parliament).

41. Furthermore, a conflict may arise between the exercise of two constitutional rights, or between a power or duty of the State and a constitutional right, and in such cases the courts have to weigh the relative importance of such rights, powers and duties. An example was the case of Murray -v- Ireland (unreported, Supreme Court, 14 February, 1991), where a married couple serving a sentence of life imprisonment for the murder of a policeman alleged that their imprisonment infringed their right to procreate. The Supreme Court held that while they had such a right, "the right claimed, like many other rights, is not an unqualified one; it is placed in suspense if and when one or both of the spouses is imprisoned and thereby deprived of personal liberty in accordance with law" (per McCarthy J.).

E. Judicial remedies for breaches of human rights

42. The following remedies exist in Irish law for breaches of human rights protected by the Constitution of Ireland:

(a) Judicial review of legislation, or proposed legislation, for constitutional infirmity, where the legislation is, or would involve, the breach of a constitutionally protected right;

(b) Judicial review of delegated legislation for constitutional infirmity or incompatibility with the statutory provision which authorizes the delegated legislation;

(c) Judicial review of administrative action for constitutional infirmity or other non-compliance with law, including a failure to observe the rules of natural justice;

(d) Actions for damages;

(e) Enquiries into allegations of unlawful detention.

In addition, the common law and statute give protection to many rights, sometimes in addition to constitutional provisions and sometimes as the sole source of the right. In these cases action for damages for tort or for an injunction may be available.

F. Judicial review of legislation and legislative proposals

43. There are two separate and distinct procedures by which the validity of legislation can be tested in the Courts. The first relates to proposed legislation and the second to the review of existing legislation.

44. Article 26 of the Constitution provides for the case of proposed legislation. Following the passage of a Bill through both Houses of the Oireachtas (Parliament) it becomes law on being signed by the President within the time provided for in the Constitution. However, under the Article 26 procedure the President may, following consultation with the Council of State, in lieu of signing a Bill, refer it to the Supreme Court for a decision on the question whether it or any specified provision or provisions of it are repugnant to the Constitution. The reference must be made no later than seven days after presentation of the Bill to the President for his or her signature and the Supreme Court, consisting of not less than five judges, and having heard arguments by or on behalf of the Attorney General and Counsel assigned by the Court, must pronounce its decision within 60 days. If any provision of the Bill is found to be repugnant the Bill does not become law. Where a provision in a Bill has been referred to the Supreme Court under the Article 26 procedure and not found to be repugnant to the Constitution, no Court may subsequently question the constitutional validity of that provision. The Article 26 procedure has been used on seven occasions since the Constitution came into force in 1937.

45. The power to review existing legislation is much more frequently used and derives from two sources. In the case of legislation dating before 1937, when the Constitution came into force, Article 50.1 of the Constitution provides as follows:

> "Subject to the Constitution and to the extent to which they are not inconsistent therewith, the laws in force in Saorstat Eireann [the Irish Free State] immediately prior to the date of the coming into operation of this Constitution shall continue to be of full force and effect ...".

The Courts are, therefore, empowered to declare that pre-1937 legislation which is inconsistent with the Constitution was not carried forward by Article 50 and has ceased to have force or effect.

46. In the case of laws passed after 1937, the power of review derives from Article 15.4 of the Constitution which provides as follows:

> "1. The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof.

> 2. Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid."

In the case, therefore, of post-1937 legislation the Courts can declare that a law is invalid having regard to the provisions of the Constitution.

47. Article 34.3.2 of the Constitution confers the High Court with jurisdiction to deal with the question of validity of laws having regard to the provisions of the Constitution, and prohibits the raising of such questions in any court other than the High or Supreme Court (which is a purely appellate court except in the case of the Article 26 procedure). In this regard, the Supreme Court has interpreted the reference to "validity of any law" in Article 34.3.2 of the Constitution to refer only to laws passed since 1937. (The State (Sheerin) -v- Kennedy [1966] I.R. 379). In the case of pre-1937 legislation, the High Court has an undoubted power to declare that the law was not carried forward after 1937 as being inconsistent with the Constitution. It may be that in theory the Circuit and District Courts could also make such a finding in an appropriate case, but in practice such questions are always referred to the High Court.

48. The effect of a finding of inconsistency of a pre-1937 law with the Constitution is that it ceased to have effect in 1937 when the Constitution came into effect. In the case of post-1937 laws a finding of invalidity operates ex-tunc rather than ex nunc - the invalid law is deemed never to have been a law, not merely to be invalid from the date of the Court's judgement. The Irish courts do not operate a system of prospective overruling, such as exists in some other jurisdictions (Murphy -v- Attorney General [1982] I.R. 241). However, in some cases where parties have operated on the bona fide assumption that a law was valid it may be inequitable to disturb arrangements made on foot of that assumption (Murphy -v- Attorney General). In that case, which condemned part of an income tax law which treated married couples less favourably than two single persons in similar circumstances on the grounds that the law contravened the constitutional obligation to guard with special care the institution of marriage and to protect it against attack, persons who had not themselves instituted proceedings were not permitted to recover taxes paid on foot of the invalid law before the date of judgement.

49. The Courts in Ireland permit a considerab'e degree of flexibility as to the procedures by which the constitutionality of a law, or of conduct, can be challenged. Because Ireland has no constitutional court as such, and constitutional questions are dealt with in the ordinary courts, these issues may be raised and resolved in the course of different types of proceedings. In The State (Lynch) -v- Cooney [1982] I.R. 337 the prosecutor used the very speedy remedy of certiorari (which is an order overruling the decision of an inferior court or tribunal or body exercising public function) to challenge the enabling legislation under which the Minister for Posts and Telegraphs had made an order banning an election broadcast on behalf of Sinn Fein, the political wing of the terrorist Provisional I.R.A. While the Supreme Court upheld the legislation and the Minister's action, they held that the prosecutor was entitled to use the remedy of certiorari. O'Higgins C.J. (at p. 363) stated that "while it might be preferable to have questions concerning

the constitutionality of legislation dealt with by declaratory action in which the High Court, and this Court on anpeal, could have the benefit of pleadings and, where necessary, submissions, I can see no real objection to the course adopted by prosecutor". Questions concerning the constitutionality of legislation can also be raised by way of habeas corpus proceedings if the constitutionality of a law under which a prisoner is detained is in question (The State (Burke) -v- Lennon [1940] I.R. 136), or by way of prohibition to challenge a law under which an inferior court, tribunal or body exercising public functions proposes to act (The State (Grahame) -v- Racing Board) unreported, Supreme Court, 29 May 1981), or by way of injunction to restrain conduct authorized by an allegedly unconstitutional law (O'Boyle and Rodgers -v- Attorney General [1929] I.R. 558).

50. Finally, questions of constitutionality of a law may arise in the context of civil proceedings. An example is Moynihan -v- Greensmith [1977] where a plaintiff who brought an action for negligence in a motor accident case was met by a defence that the claim was statute-barred by a limitation period imposed by the Civil Liability Act, 1961. In reply, the Plaintiff contested the constitutionality of the applicable provision.

51. An exception to the power to review legislation is provided for by Article 28.3.3 of the Constitution which reads as follows:

> "Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this subsection 'time of war' includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and 'time of war or armed rebellion' includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist."

52. On 1 September, 1976, both Houses of the Oireachtas passed resolutions that "arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State". The resolutions were passed following the murder in Dublin of the British Ambassador and a Northern Ireland Civil Servant, and explosions at the Special Criminal Court in Dublin. On foot of this resolution, the only Act which was enacted by the Oireachtas and expressed to be for the purpose of securing the safety of the State was the Emergency Powers Act, 1976. That Act provided for the arrest and detention of persons for up to seven days. The operative part of the Act remains in force for only 12 months at a time, and may be renewed by Government order for periods not exceeding 12 months. The operative part of the Act is not at present in force, having last expired on 15 October 1977.

53. Notwithstanding the exclusion of judicial review by Article 28.3.3, on 24 September 1976 the then President referred the Bill to the Supreme Court under Article 26. The Supreme Court held (In re Article 26 and the Emergency Powers Bill, 1976 [1977] I.R. 159) that the President was entitled to do so, but that once the Court had established that the procedural requirements of Article 28.3.3 had been satisfied, that provision operated to prevent any part of the Constitution being invoked to invalidate the Bill. The Court expressly reserved for future consideration the question whether it had jurisdiction to review resolutions of the Oireachtas. Finally, the Court held that Article 28.3.3 had effect only to prevent a person challenging the constitutionality of the legislation in question, but in all other respects he remained free to invoke his constitutional rights - for example, to rely on the provisions of the Constitution for the purpose of construing the legislation (which must be strictly construed) and of testing the legality of what was done in purported reliance on the legislation.

G. Judicial review of delegated legislation

54. There is no doubt that orders, regulations, by-laws and other forms of subordinate rule-making by the Government, Ministers or other public bodies can be found to be invalid on constitutional grounds. An example was The State (Gilliland) -v- Governor of Mountjoy Prison [1987] I.R. 201 where the Government order applying part II of the Extradition Act, 1965, to the United States of America pursuant to a treaty between Ireland and the United States was found invalid because the provisions prescribed by Article 29 of the Constitution had not been followed. There is some doubt whether only the High Court and the Supreme Court may consider such a question or whether any court may do so.

55. Finally, it should be emphasized that the power to review laws on grounds of unconstitutionality is not an academic one. The general view of academic commentators is that the superior courts of Ireland have been, at least since the mid-1960s, activist courts by the standards of most countries who have a system of judicial review of legislation. While there has been no comprehensive study of the numbers of cases in which there have been challenges to legislation, in a recent lecture (published as "The Constitution, Fifty Years On", Round Hall Press, Dublin, 1988) the Chief Justice of Ireland, Mr. Justice Thomas A. Finlay, stated as follows:

> "It is a matter, I think, of some interest as well as of some significance that consideration of the major cases in which since 1937 challenges have been made to statutes enacted prior to the enactment of the Constitution would indicate that a very high proportion of them have been successful on the grounds of inconsistency with the provisions of the Constitution. Out of 13 major cases I calculate that 10 succeeded and 3, only, failed. This can be compared with the experience over the same period of challenges made in the Courts to the Constitutional validity of statutes enacted by the Oireachtas after 1937. Again, on a calculation of the major cases to be found in the Reports, it appears to me that challenges were made in approximately 55 cases of which only 19 were successful and 36 failed."

The Chief Justice went on to state that on his calculations, between 1937 and 1970 there had been only 13 major challenges to post-1937 statutory enactments, whereas between 1971 and 1987 there have been a further 45.

H. Constitutional review of administrative or executive action

56. Any act, measure or decision of the executive may be challenged on the grounds that an individual's Constitutional rights have been infringed. Furthermore, such an issue may be raised in any court in the land. Speaking extrajudicially, the present Chief Justice of Ireland, Mr. Justice Thomas A. Finlay, in the course of the lecture referred to in the preceding paragraph, said:

> "A major feature of the Constitution which from a practical point of view, I believe, has greatly contributed to its immediacy and effectiveness is the fact that with the exception of a challenge on the grounds of invalidity having regard to the provisions of the Constitution made to a statute passed by the Oireachtas, any Constitutional right can be asserted and, if established, made effective in any Court in the land. There are, as most of you will know, many systems of law deriving from written Constitutions which reserve exclusively to one Constitutional Court all questions of Constitutional law or the interpretation of the Constitution. Such a system has, I think, a clogging effect on the immediacy of the assertion and protection of Constitutional rights. Under our Constitution, on the other hand, as my colleagues will all have had the experience, in every type of Court, a person, for example, charged with a criminal offence who asserts an invasion of his Constitutional rights, leading to the inadmissibility of evidence tendered against him, can have that issue decided in the Court in which he is being tried. Furthermore, the immediate effect of the Constitution is not even confined to the Courts established under the Constitution but is applicable to all forms of subsidiary or administrative tribunals who must, in the course of their activities, act in a Constitutional manner, observing fair procedure."

57. Such issues may be raised in a variety of different ways. For example, in a criminal trial, a defendant may seek to exclude evidence obtained in breach of constitutional right, as in The People (Attorney General) -v- O'Brien [1965] I.R. 142 where the defendant sought to exclude evidence obtained on an allegedly invalid search warrant on the grounds that the evidence was obtained in violation of the constitutionality-protected inviolability of the dwelling. Or a decision may be challenged as having been arrived at in breach of the constitutional obligation to apply fair procedures. In a number of cases the Irish courts have identified "basic fairness of procedures" as a constitutional imperative which comprehends not merely the so-called "rules of natural justice" identified by the common law "nemo iudex in sua causa sit" and "audi alteram partem" but also, in appropriate cases, the obligation to given decisions with promptitude, to give reasons, to allow an oral hearing or to allow legal representation.

I. Remedies

58. The two most common remedies sought by persons alleging infringements of their civil or political rights are those of judicial review and the action for damages.

J. Judicial review

59. Judicial review is a remedy which lies against persons or bodies exercising public functions (including the lower courts) to restrain them from acting contrary to law or to compel them to act in accordance with law. It comprehends the old common law remedies of certiorari, mandamus and prohibition. The modern system of judicial review is an expeditious means by which an order may be sought to set aside a decision or action of such a body, or to compel it to act or prevent it from acting contrary to law.

60. As has already been explained, the setting aside on constitutional grounds of legislation, or subordinate legislation, or acts of the executive, may be done on an application for judicial review. The action for judicial review is not, however, confined to cases where constitutional irregularity is involved. While an Act of the Oireachtas (Parliament) may be found invalid only for constitutional irregularity, subordinate legislation may also be set aside where the powers conferred by the enabling legislation are exceeded, i.e. on the grounds that the subordinate legislation is ultra vires the enabling Act. In the case of other acts or decisions by the executive or administration, they may also be challenged on grounds of unlawfulness, procedural irregularity, breach of the rules of natural justice or irrationality. While most of the more important civil and political rights are constitutionally protected in Ireland, some rights have merely a statutory protection: examples would include the rights of the natural father of a child born to unmarried parents and the rights of such a child to equality of treatment with other children, (Status of Children Act, 1987). It is, therefore, important to recall that statutory rights may also be vindicated by actions for judicial review.

K. Injunctions

61. While an action for judicial review does not lie against a private individual or body, where a constitutional right is threatened by such a private person an action for an injunction to restrain the unconstitutional behaviour will lie (Murtagh Properties Ltd. -v- Cleary [1972] I.R. 330, S.P.U.C. -v- Coogan [1989] I.R. 734). Furthermore, such an action may be brought by a person or a body corporate who has a bona fide concern and interest. The right to maintain such an action is not reserved to the Attorney General. Injunctions may also be brought against private individuals to restrain other forms of unlawful behaviour which are an interference with their civil and political rights, for example, to restrain interference with property rights or to restrain an attack on a person's good name by the publication of a libel.

L. Damages

62. An action for damages lies for breach of constitutional right (for example, Kennedy -v- Ireland - [1987] I.R. 587, Kearney -v- Minister for Justice, [1986] I.R. 116, Meskell -v- C.I.E. [1973] I.R. 121). It appears that an action for damages can lie against a private individual as well as the State or a State authority.

63. An action for damages will also lie, in appropriate cases, for interference with a statutory right. For example, in Cosgrove -v- Ireland [1982] I.L.R.M. 48, in a case where a passport was issued to children on their mother's application and despite the father's objection made known to the Department of Foreign Affairs, the father succeeded in an action for damages for breach of his statutory rights as guardian of the children.

64. It should also be noted that in many circumstances tort law still has a role in the vindication of civil and political rights. For example, if the right to inviolability of the dwelling is infringed, an action for trespass will lie. If the right to bodily integrity, or not to be tortured, is infringed, an action for assault may be brought. The law of defamation will protect the right to one's good name. Various torts are of relevance in protecting rights to privacy, in particular the tort of nuisance. Finally, there are actions for breach of statutory duty or misfeasance in public office. The emphasis placed in this Report on the vindication of constitutional right should not obscure the continued importance of common law and statutory rights and remedies in the vindication of personal rights. Part II of this Report will consider in more detail the various remedies available to deal with interference with specific rights which are discussed in detail in the initial report of Ireland (CCPR/C/68/Add.3) submitted under article 40 of the International Covenant on Civil and Political Rights.

M. Information and publicity

65. The Universal Declaration of Human Rights has been printed in both national languages and has been widely distributed. At the time of ratification, the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were distributed to Government Departments. Copies have also been made available to the general public. Copies of the Convention on the Rights of the Child have been distributed to all primary and secondary schools (approximately 4,200) in Ireland. This report is being published and made available to the general public. Copies are also being circulated to members of Dail Eireann, Government offices and public libraries.

List of annexes*

Annex 1 - Statistics relating to demography

Annex 2 - Statistics relating to the economy, labour force, employment and unemployment

Annex 3 - Statistics relating to health, education and social welfare

Annex 4 - Government policy in relation to the Travelling Community

Annex 5 - Map of Ireland

---

* The annexes, as received in English from the Government of Ireland, are available for consultation in the files of the United Nations Centre for Human Rights. They are common to this document and to the initial report of Ireland (CCPR/C/68/Add.3).

- - - - -